

REMARKS

In the Office Action dated February 20, 2007, Claims 1-25 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 5-6 and 17-18 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 1 and 14 (and dependent claims) were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1-4, 11-15, and 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0213790, to Rhoads et al. (hereinafter "Rhoads"). Claims 1 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0073903, to Melchione et al. (hereinafter "Melchione1"). Finally, Claims 5-10 and 16-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rhoads in view of U.S. Patent Application Publication No. 2004/0019889, to Melchione et al. (hereinafter "Melchione2").

For the reasons set forth below, applicants respectfully request reconsideration and allowance of the pending claims. In addition to presenting the reasons why applicants believe that the pending claims are in condition for allowance, a brief summary of the present invention as well as the cited references are presented. However, it should be appreciated that the brief summaries are presented solely to assist the Examiner in recognizing the differences between the pending claims and the cited references and should not be construed as limiting upon the present invention.

Brief Summary of Present Invention

The present invention is directed to communicating software update information to a client computer. With this information, a computer user can determine the value and

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applicability of the software update identified by the metadata such that he/she can conserve download resources when the update is not applicable or of little value.

In one embodiment, update information (referred to as metadata) is communicated to a client computer by way of a computer-readable medium. The computer-readable medium includes a tag-based data structure comprised of tag-based elements, where the elements include various logical relationships that assist in determining the identity, value, and applicability of the software update to the client computer. For example, the metadata includes tag-based elements identifying an update handler intended to process the software update. Those skilled in the art will appreciate that being able to specify the update handler provides greater flexibility in the types of updates that may be processed. Relatedly, the metadata includes handler tag-based elements identifying information for executing the update handler, such as location for execution, command line arguments, and the like. Still further, tag-based elements include relationship elements for storing defined relationships that the identified software update has to other software updates, as well as rule elements for determining the applicability of the software update to the client computer.

Brief Summaries of Cited References

Brief Summary of Rhoads (U.S. Patent Application Publication No. 2005/0213790)

Rhoads purportedly discloses a system for performing an action based on sensing steganographically encoded data in an object that is presented to a sensing device, particularly a camera. A user positions an object (such as a printed picture) to be viewed by a camera. The image, digitized by optical sensor on an originating device, is examined for steganographically encoded data. If steganographically encoded data is found, the data is extracted and the originating device sends a request (that includes the data) to a product handler for processing. The product handler is a node on a communication network that is configured to process requests

from originating devices. The product handler has a database describing the actions that should be taken for each type of request received. Thus, using the data from the request, the product handler determines and carries out the appropriate action, as defined in the database for the request. One action that the product handler may perform is to respond to the originating device with information.

While Rhoads purportedly discloses that the product handler may respond with information to the originating device, Rhoads fails to disclose providing a tag-based data structure (comprised of tag-based elements) to a client computer that communicates metadata regarding a software update available for installation on the client computer.

Brief Summary of Melchione1 (U.S. Patent Application Publication No. 2004/0073903)

Melchione1 purportedly discloses a system for providing access to software according to a network reference. A network reference includes a key that is assigned to a person, a node, or an organization, that provides access (assuming that it is a valid key) to software that would otherwise be denied to the person. In particular, Melchione1 purportedly discloses the network reference as a URL with an appended key. Figure 13 illustrates a network reference that includes a URL and key (1300).

While Melchione1 purportedly discloses providing network references to users, Melchione1 fails to disclose providing a tag-based data structure (comprised of tag-based elements) to a client computer that communicates metadata regarding a software update available for installation on the client computer.

Brief Summary of Melchione2 (U.S. Patent Application Publication No. 2004/0019889)

Melchione2 purportedly discloses a system for providing software distribution in stages. Nodes/computers are associated with (or assigned to) stages. When a software release is made available, a determination as to which stage the release corresponds is made. The released

software is automatically provided to the computers assigned to the stage with which the released software is associated.

Melchione2 was relied upon for its disclosure of policies. While Melchione2 discloses policies, applicants note that the policies are implemented in regard to associating a software release with a stage, and are not provided to client computers to identify a software update available for installation on said client computer. Moreover, Melchione2 fails to disclose providing a tag-based data structure (comprised of tag-based elements) to a client computer that communicates metadata regarding a software update available for installation on the client computer.

35 U.S.C. § 101 Rejections

In view of the Office Action's assertion that the claims were directed to non-functional descriptive material, the pending claims have been amended to recite a method for communicating update metadata corresponding to a software update to a client computer. Applicants submit that the pending claim, as amended, recite statutory subject matter and request that the 35 U.S.C. § 101 rejections be withdrawn.

35 U.S.C. § 112, First Paragraph, Rejections

The Office Action asserted that the recitation, a "second software update," as found in Claims 5 and 17, was not described in the specification. While the exact phrase "second software update" was not explicitly recited in the specification, applicants disagree that the specification lacks support for a "second software update," and point to paragraph [0089] that recites "another software update." This "another software update" is the second software update identified in Claims 5 and 17 (the first being the "identified software update"). Moreover, the term "second" is merely used to differentiate between the identified software update and the "another" software update.

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Irrespective of whether or not the specification provides support for the phrase "second software update," applicants have amended Claims 5 and 17 to recite "another software update," support for which is found in paragraph [0089]. Accordingly, applicants request that the 35 U.S.C. § 112, first paragraph, rejections be withdrawn.

35 U.S.C. § 112, Second Paragraph, Rejections

The Office Action asserted that the phrase "may be" rendered Claims 1 and 14 (and dependents therefrom) indefinite. Applicants have amended Claims 1 and 14 to eliminate the phrase. Applicants submit that these amendments fully address the 35 U.S.C. § 112, first paragraph, rejections, and request that the 35 U.S.C. § 112, second paragraph, rejections be withdrawn.

35 U.S.C. § 102(e) Rejections Under Rhoads

Claims 1-4, 11-15, and 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rhoads. For the following reasons, applicants respectfully traverse the rejections.

Claim 1

Applicants submit that Rhoads fails to disclose each and every element of Claim 1, including:

- a tag-based identifier element that uniquely identifies the software update;
- and

- at least one additional element from the following tag-based elements: a property element...; a localized property element...; a relationship element ...; a rule element ...; a file element ...; and a handler element.

The Office Action asserts that the "identifier element that uniquely identifies the software update" is disclosed in paragraphs [0458] and [0553] of Rhoads. Applicants disagree.

Paragraph [0458] states that in response to receiving a request, the handler (also referred to as the product handler in Rhoads) "may have some locally stored data (e.g., audio or video, or

software updates) and send [sic] it to the device 12 in response to the watermark." Alternatively, as found in paragraph [0459], the Rhoads system suggests that the handler communicates with a remote source "to initiate an FTP file transfer ... to update software installed on the device 12." In either case, instead of providing a tag-based data structure to the device that includes an identifier element uniquely identifying a software update, the Rhoads system transfers the update to the device.

In regard to the update element, applicants further point out that the update element is a tag-based element that uniquely identifies a software update. These passages of Rhoads fail to disclose a tag-based identifier element that uniquely identifies a software update. Clearly, transferring a software update to a client device is patentably distinct from communicating a tag-based data structure.

The Office Action also cited to paragraph [0553] as disclosing an update identifier. However, in contrast to paragraph [0458] that purportedly describes downloading software to an originating device, paragraph [0553] is directed to the information that is sent to the product handler. More specifically, paragraph [0553] describes validating the "watermark payload" to determine whether a "payload ID" is found. "If the watermark payload ID is found and is active, the requested action is performed." The watermark payload ID identifies an action to be performed, not a software update. Moreover, the watermark payload is not delivered to the originating device, but to the product handler.

Applicants further assert that Rhoads fails to disclose a tag-based handler element, as suggested by the Office Action. The Office Action cites to paragraph [0459] as disclosing a "handler 16." However, as already discussed above, the handler is not a tag-based element, nor part of a tag-based data structure delivered to a client computer. Rather, the handler corresponds to a node on a computer network (see Rhoads, Figure 2) that receives requests from originating devices and carries out a corresponding action.

Applicants further assert that Rhoads fails to disclose those tag-based elements, other than the handler element, listed in Claim 1.

For the reasons set forth above, applicants submit that Rhoads fails to disclose each and every element of Claim 1. Accordingly, applicants request that the 35 U.S.C. § 102(e) rejection of Claim 1 be withdrawn and the claim allowed.

Claim 14

Claims 1 and 14 were rejected for the same reasons and rationale. Accordingly, in view of the reasons set forth above in regard to Claim 1, applicants request that the 35 U.S.C. § 102(e) rejection of Claim 14 be withdrawn and the claim allowed.

Claims 2-4, 11-13, 15, and 23-25

Claims 2-4 and 11-13 depend from independent Claim 1, and Claims 15 and 23-25 depend from independent Claim 14. Accordingly, as applicants assert that Claims 1 and 14 are in condition for allowance, applicants further assert that these dependent claims are also in condition for allowance and request that the 35 U.S.C. § 102(e) rejections be withdrawn.

In addition to depending from allowable independent claims, many of these dependent claims include additional elements that further distinguish them from the cited reference, Rhoads, as described below.

Claim 3

The Office Action asserts that Rhoads, paragraphs [0458]-[0459] discloses the particular order of elements recited in Claim 1. In fact, Rhoads fails to disclose such ordering for several reasons. First, Rhoads fails to disclose a tag-based data structure delivered to a client computer. Instead, the cited passages of Rhoads purportedly disclose the action of downloading a software update. Second, Rhoads fails to disclose a tag-based handler element that is part of the tag-based data structure delivered to a client computer. Rather, Rhoads discloses that the product handler is a node on a computer network that processes requests from originating devices and carries out

corresponding actions. Third, nothing in Rhoads discloses an ordering of tag-based elements, beginning with the update identifier, in a tag-based data structure as recited in Claim 1.

Applicants submit that Rhoads fails to disclose each and every element of Claim 3. Accordingly, applicants assert that Claim 3 is in condition for allowance, and request that the 35 U.S.C. § 102(e) rejection of this claim be withdrawn.

Claims 11-13 and 23-25

The Office Action asserts that Rhoads, paragraph [0457], discloses a file element including "information identifying the software update's payload for patching existing files on the client computer," "information identifying the software update's payload for replacing existing files on the client computer," and "information identifying the software update's payload for patching existing files on the client computer and replacing existing files on the client computer." Applicants disagree.

As discussed above, Rhoads purportedly discloses the ability to submit a request to a handler and receive a software update as the corresponding action. However, even assuming this, nothing here suggests delivering a tag-based data structure having tag-based elements to a client computer which communicate metadata corresponding to a software update. Indeed, these passages in Rhoads suggest that an originating device sends a request to the product handler, which in turn looks up the request for the corresponding action, and executes that action (downloading the software update).

For these additional reasons, applicants submit that Claims 11-13 and 23-25 are in condition for allowance, and request that the 35 U.S.C. § 102(e) rejections of these claims be withdrawn and the claims allowed.

Claims 1-4, 11-15, and 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rhoads. For the following reasons, applicants respectfully traverse the rejections.

35 U.S.C. § 102(e) Rejections Under Rhoads

Claims 1 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by Mechione1. For the following reasons, applicants respectfully traverse the rejections.

Applicants submit that Mechione1 fails to disclose the following elements as recited in

Claim 1:

providing a computer-readable medium storing computer-readable data organized in a tag-based structure to a client computer, wherein the tag-based data structure includes tag-based elements storing metadata corresponding to a software update available for installation on the client computer; and

at least one additional element from the following tag-based elements: a property element...; a localized property element...; a relationship element ...; a rule element ...; a file element ...; and a handler element.

The Office Action has identified Melchione1, paragraph [0061], as disclosing a "computer-readable medium storing computer-readable data organized in a tag-based structure." However, applicants point out that these tables, that purportedly may be stored in an XML format, are tables stored and maintained by the data center which is analogous to a server, and is therefore not provided to a client computer. Additionally, these tables do not include "tag-based elements storing metadata corresponding to a software update available for installation on the client computer," as recited in Claim 1. Instead, the two tables refer to an organization database (from Table 1) and a nodes database (from Table 2). Nothing within the two databases can be reasonably identified as being "metadata corresponding to a software update available for installation on the client computer."

The Office Action also points to paragraph [0076] as corresponding to a software update. This paragraph purportedly discloses that a node (a requesting computer) is able to request software by presenting a network reference (that includes a key) to the data center. The data center validates the key and if it is valid, "the software is downloaded in the form of a cabinet file." However, this reference to downloaded software (rather than a data structure storing

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metadata corresponding to a software update available for installation on the client computer) is not connected to the XML tables hosted by the data center, as suggested above. Indeed, this passage describes providing the software update to a requesting computer, not a tag-based data structure including tag-based elements storing **metadata** corresponding to a software update available for installation on the client computer. By way of illustration, this passage in MelchioneI says "here is the software" whereas Claim 1 recites "here is information (in a tag-based structure) that describes the software update." In short, nothing in MelchioneI discloses "providing a computer-readable medium storing computer-readable data organized in a tag-based structure to a client computer, wherein the tag-based data structure includes tag-based elements storing metadata corresponding to a software update available for installation on the client computer," as recited in Claim 1.

The Office Action also suggests that MelchioneI discloses both a rule element and a relationship element, either one of which would satisfy the claim. Applicants assert that MelchioneI fails to disclose any one of the additional elements.

With regard to the rule element, the Office Action cites to paragraph [0110]. This paragraph describes policies, which purportedly are "[a] set of configuration directives," that associate a software with a stage, and nodes with a stage. The configuration settings are part of an administration process implemented on the data center (see, paragraphs [0103]-[0109]), and are not tag-based elements in a tag-based data structure delivered to a client computer. As such, the policies cannot be viewed as the functional equivalent to a tag-based rule element provided in a tag-based structure to a client computer.

With regard to the relationship element, the Office Action cites to paragraph [0116] as disclosing a relationship element. However, this paragraph suggests that the token (which apparently is a synonym for the key) can be used to register a node (requesting computer) for software administration. However, applicants would like to point out that, unlike a tag-based

relationship element that stores "relationships the software update has to other software updates," the token might be used to register a computer. Applicants assert that the use of a token to register a node/requesting computer is patentably distinct from "storing relationships the software update has to other software updates," as recited in Claim 1. Nothing in the cited passage discloses information describing a relationship of one software update to other software updates. Further, applicants point out that to use the token, it (as part of network reference) is provided to the data center. This is quite the opposite of what is recited, that the tag-based data structure is provided to the client computer. Yet further, assuming *arguendo* that the token may be considered a tag-based element (which applicants expressly traverse), this is the same "token" that the Office Action cited as being the updated identifier element. Claim 1 recites an update identifier AND at least one additional tag-based element. Hence, the Office Action cannot designate the token as both update identifier and the relationship element.

In view of the above, applicants submit that Melchione1 fails to disclose each and every element recited in Claim 1. Accordingly, applicants request that the 35 U.S.C. § 102(e) rejection of Claim 1 be withdrawn and the claim allowed.

Claim 14

Claim 14 was rejected under the same rationale as Claim 1. Accordingly, for the same reasons as described above, applicants request that the 35 U.S.C. § 102(e) rejection of Claim 14 be withdrawn and the claim allowed.

35 U.S.C. § 103(a) Rejections

Claims 5-10 and 16-22 were rejected under 35 U.S.C. § 103(a) as being obvious in view of Rhoads and Melchione2.

Claims 5-10 and 16-22 depend from independent Claims 1 and 14 respectively. As applicants assert that Claims 1 and 14 are in condition for allowance over Rhoads, applicants

further submit that dependent Claims 5-10 and 16-22 are also in condition for allowance. Accordingly, applicants request that the 35 U.S.C. § 103(a) rejections of Claims 5-10 and 16-22 be withdrawn and the claims allowed.

CONCLUSION

In view of the amendments and remarks above, applicants respectfully submit that the present application is in condition for allowance. Reconsideration and reexamination of the application, as amended, and allowance of the claims at an early date are solicited. If the Examiner has any questions or comments concerning the foregoing response, the Examiner is invited to contact the applicants' undersigned attorney at the number below.

Respectfully submitted,

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